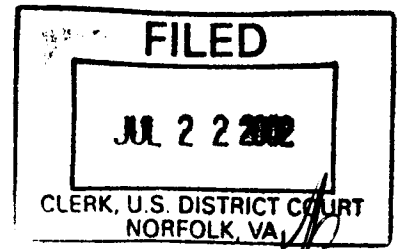


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



**YASER ESAM HAMDI, and
ESAM FOUAD HAMDI,
As Next Friend of Yaser Esam Hamdi,**

Petitioners,

v.

CIVIL ACTION NO. 2:02cv439

**DONALD RUMSFELD, and
COMMANDER W.R. PAULETTE,**

Respondents.

ORDER

Before the Court is the "Respondents' Rule 26 Statement," in which the Respondents refuse to comply with this Court's July 18, 2002, Order, given in open court, requiring them to submit their Rule 26 disclosures by July 22, 2002. The statute under which the Petitioner seeks relief, 28 U.S.C. § 2241 & 2243, sets forth an expedited procedure for people being held without charge to seek judicial review of their confinement. Moreover, Federal Rule of Civil Procedure 26(a)(1)(E)(ii), upon which Respondents rely in not complying with this Court's Order, only exempts "proceeding[s] to challenge a criminal conviction or sentence." The problem at the heart of this case is that the Petitioner is not being confined pursuant to a criminal conviction; he is ostensibly being confined pursuant to executive action which may or may not be appropriate.

Be that as it may, I hope that it was haste rather than a deliberate mis-statement of the law that caused the Assistant United States Attorney to imply that the Petitioner was being held pursuant to a criminal conviction. The United States Attorney is in fact more intelligent than one might imagine from his so-called "Respondents' Rule 26 Statement" in which he totally ignores the Court's admonitions. It is noted that the person who executed this document, Susan Watt, has not appeared in this case, and therefore may not have known and been aware of what was happening. In any event, the Court will be

cautious, as the Fourth Circuit has admonished, and will follow the Court of Appeals for the Fourth Circuit, in its requirements.

In keeping with this spirit of caution, the Court suggests that the United States Attorney either submit the disclosures required by Rule 26, or make a proper motion for relief from Rule 26, by July 24, 2002 at noon. To totally ignore the Court's Order borders on an action which I am sure that Mr. McNulty, Mr. Clement, and Mr. Leonard would not particularly want.

In addition, the United States Attorney must not have read the same Opinion of the Court of Appeals as the undersigned did, and may have some information with which the undersigned is not acquainted. In response to the Respondents' proffer to the Court of Appeals of a "sealed declaration discussing the military's determination to detain petitioner Hamdi as an enemy combatant," the Fourth Circuit noted that "This declaration is factual in nature. As such, it should come first before the district court, not the court of appeals." Hamdi v. Rumsfeld, 2002 WL 1483908, *5 (4th Cir. July 12, 2002). This suggests that this case is not solely a matter of law, but that a factual record of some sort must be developed to understand whether or not the Petitioner is an illegal enemy combatant.

Finally, I would hope that Mr. McNulty, Mr. Clement, and Mr. Leonard would sign their own pleadings, for I would hesitate to call them to task for that which someone else unacquainted with the case may sign. To ignore the Court of Appeals and to ignore this Court is not cautious, but inflammatory, and if that is what they seek to do, they should sign their own pleadings.

The Clerk of the Court is **DIRECTED** to forward copies of both the petition and this Order, both by fax and by U.S. mail, to all counsel of record, and specifically to Mr. McNulty, Mr. Clement, Mr. Leonard, and Ms. Watt, to the U.S. Court of Appeals for the Fourth Circuit, and to Yaser Esam Hamdi.

IT IS SO ORDERED.

/S/ Robert G. Doumar

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 22, 2002

*copies mailed to counsel
7/22/02 JFC*